Filed 7/3/19 Libreria Del Pueblo v. City of Fontana CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

LIBRERIA DEL PUEBLO et al., Plaintiffs and Appellants, v. CITY OF FONTANA, Defendant and Respondent; TEN-NINETY, LTD., Real Party in Interest and Respondent.	C079527 (Super. Ct. No. 34201480001921CUWMGDS)

This appeal -- regarding the dissolution of California's former redevelopment agencies or RDAs (Health & Saf. Code, §§ 34161-34191.6; statutory section references that follow are to the Health and Safety Code unless otherwise stated) -- is rendered moot

by our unpublished opinion filed July 2, 2019, in consolidated appeals City of Fontana v. Bosler, C083058, and Ten-Ninety, Ltd. v. Bosler, C083081.

At issue is whether the 2011 Dissolution Law renders unenforceable a 1992 agreement pursuant to which private developer Ten-Ninety, Ltd. agreed to pay 35 percent (35%) of the property tax revenues it receives as development costs, to the City of Fontana and its former RDA. The agreement characterizes the 35% as settlement payments yet calls for the RDA (now the City as Successor Agency (SA)) to repay the 35% to Ten-Ninety plus 15.5 percent interest.

In this appeal (C079527), appellants -- nonprofit organizations Libreria Del Pueblo and California Partnership and low-income resident Virginia Macy (collectively, Libreria) -- filed a petition for peremptory writ of mandate in the trial court against the City of Fontana (in its capacity as a municipality and its capacity as "Successor Agency" (SA to Fontana's former RDA) and against the SA's Oversight Board. Libreria maintains the deal is not an "enforceable obligation" under the Dissolution Law.

The trial court sustained defense demurrers, concluding the challenge was barred because the OPA had previously been judicially validated in 1992 (Code Civ. Proc., §§ 860-870.5) before the Dissolution Law was enacted in 2011. The trial court considered it unnecessary to address defense challenges to the complainants' standing to sue.

Libreria appeals from the judgment of dismissal, contending (1) the Dissolution Law is a change in law that allows this challenge despite the validation judgments; (2) by its own terms the amended OPA must be interpreted under current law; and (3) the Dissolution Law (§ 34171(d)(2)) renders the OPA debt unenforceable as a sponsor agreement between the RDA and the City that created the RDA, as well as violating the debt limitation and public policy. In response, the City, SA, and Ten-Ninety argue appellants lack standing; the 1992 validation judgment precludes this challenge to the OPA; and the OPA is enforceable under the Dissolution Law. We denied DOF's

application to file an amicus brief in this *Libreria* appeal, which was opposed by the City and Ten-Ninety on the ground that DOF was a real party in interest, not an amicus curiae.

While Libreria's appeal was pending, the California Department of Finance (DOF) changed its view of the OPA and made an administrative determination that the deal was not an enforceable obligation under the Dissolution Law. The City as a municipality and as SA and Ten-Ninety filed complaints and petitions for declaratory and injunctive relief to compel DOF to recognize the OPA as an enforceable obligation and allocate tax funds to it. The trial court entered a joint judgment against DOF. DOF, through director Keely Bosler, appealed from the judgment in consolidated appeals C083058 and C083081, but notified this court that the only issue remaining for appellate resolution was whether the 35% provisions constituted an unenforceable sponsor agreement under section 34171(d)(2).

We issued an opinion in consolidated appeals C083058/C083081, concluding the 35% payments constituted an unenforceable sponsor agreement under section 34171(d)(2); the 1992 validation judgment did not preclude this result; and the 35% provisions in the 1992 OPA could be cancelled and severed such that Ten-Ninety will continue to receive the 65 percent of tax revenues to which it agreed in the 1992 OPA, and the remaining 35 percent will be distributed to other local agencies pursuant to the Dissolution Law. We also held that such cancellation and severance did not unconstitutionally impair Ten-Ninety's private party contract rights. In line with DOF's request, we invalidated the 35% provisions prospectively from the time DOF began rejecting the SA's claim of the OPA debt as an enforceable obligation under the Dissolution Law.

Libreria's position, as stated in the "Conclusion" of its reply brief, is that "Ten-Ninety's debt, including the 35% payment to the City, can no longer be paid because it is not an enforceable obligation."

Our opinion in C083058/C083081 so holds, and we therefore dismiss Libreria's appeal as moot.

Although dismissal of an appeal generally entitles the respondent to recover costs on appeal (Cal. Rules of Court, rule 8.278(a)(2)), we have discretion to award or deny costs as we deem proper in the interests of justice (rule 8.278(a)(5)). Here, despite dismissal, Libreria's position prevails, and it appears Libreria's efforts may have stimulated DOF to reevaluate its prior approvals of the 35% provisions and determine the Dissolution Law renders them unenforceable. We therefore award costs on appeal to the Libreria appellants.

We deny as unnecessary Libreria's requests for judicial notice dated February 18, 2016, and September 26, 2016.

DISPOSITION

We dismiss Libreria's appeal C079527 as moot. The Libreria appellants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5) ["In the interests of justice, the Court of Appeal may . . . award or deny costs as it deems proper"].)

HULL, Acting P. J.

We concur:

MAURO, J.

HOCH, J.